BY ORDER OF THE
SECRETARY OF THE AIR FORCE

AIR FORCE INSTRUCTION 44-109
1 MARCH 1997

Medical

MENTAL HEALTH AND MILITARY LAW

COMPLIANCE WITH THIS PUBLICATION IS MANDATORY

★This instruction implements AFPD 44-1, Medical Operations ; Public Laws 101-510 and 102-484; and Department of Defense Directive (DoDD) 6490.1, Mental Health Evaluations of Members of the Armed Forces , September 14, 1993, concerning mental health evaluations other than those ordered under Rule for Courts-Martial 706, or those conducted in Substance Abuse Programs or Family Advocacy Programs. It establishes the Limited Privilege Suicide Prevention (LPSP) Program for members with impending disciplinary action under the Uniformed Code of Military Justice (UCMJ). Also, it establishes the rights of members of the Air Force referred by their commanders or other personnel for mental health evaluations (except for those conducted in the Substance Abuse Control or Family Advocacy Programs) and for inquiries into mental capacity or mental responsibility. It establishes procedures for outpatient and inpatient mental health evaluations that provide protection to members referred for such evaluations. These provisions do not apply to patient self-referrals. Guidance for emergency referrals for mental health evaluations is provided (see paragraph 1.1.3). The Air Force refers members for inquiries into matters related to mental responsibility and capacity to stand trial according to Rule for Courts-Martial 706, Manual for Courts-Martial (MCM), United States, 1995. Violations of paragraph 1.4 are punishable under Article 92, Uniformed Code of Military Justice (UCMJ). Send comments and suggested improvements on AF Form 847, Recommendation for Change of Publication, through channels, to HQ AFMOA/SGOC, 110 Luke Avenue, Room 400, Bolling AFB DC 20332-7050. See attachment 1 for a glossary of references, abbreviations, acronyms, and terms.

SUMMARY OF REVISIONS

This revision includes policy to provide limited privilege to members, who, because of stress of impending disciplinary action under the UCMJ, pose a genuine risk of suicide (paragraph 3). It also adds “emergency” to the terms defined, clarifies the definition of involuntary admission and modifies the definition of mental health provider for the LPSP (Atch 1). Changed material is indicated by a ★.

1. Mental Health Evaluation (Other Than Inquiry Ordered Under Rule for Courts-Martial 706, or Those Conducted in the Substance Abuse Programs or Family Advocacy Programs):

1.1. Referring Official’s Responsibilities. Referring Official’s must:

1.1.1. Consult with a Mental Health Provider (MHP) before deciding to refer a member for a Mental Health Evaluation (MHE).

1.1.2. Provide the member with written notice of MHE. The notice must include the date and time of the MHE, a brief factual description of the behaviors that caused the referral, name or names of the MHP the referring official consulted prior to the referral, the positions and telephone number of authorities who can assist a member who wishes to question the referral, and a copy of the member’s rights as detailed in this instruction.

1.1.3. In emergencies, refer members for mental health evaluations without delay. Timely action should follow an emergency referral in order to adhere to the procedures set forth under paragraph 1.3 of this instruction.

1.2. Member’s Rights When Referred for a Non-emergency MHE. The member has the right to:

Supersedes: AFI 44-109, 1 August 1996.
OPR: HQ AFMOA/SGOC (Lt Col David Litts)
Certified by: HQ USAF/SGO (Lt Col M. D. Parkinson)
Pages: 5/Distribution: F

1.2.1. Upon request, be provided an attorney by the Air Force at no cost to the member to provide advice on ways in which the member may seek redress (including, but not limited to, Article 138 of the UCMJ) under this instruction and applicable DoD Instructions and Directives, and applicable law.
1.2.2. Complain to an Air Force Inspector General, or to the DoD Inspector General, that the referring official made the MHE referral in violation of this instruction. See AFI 90-301, Inspector General Complaints Program . A complaint will not require the referring official to delay the original MHE.
1.2.3. Request an additional MHE by a MHP of the member's choosing if the MHP is reasonably available. If the provider is not a member or an employee of the DoD, the member must pay for the evaluation. A member's request for an additional MHE will not require the referring official to delay the original MHE.
1.2.4. Make lawful communications to an Inspector General, attorney, Member of Congress, or other authority about the MHE referral.
1.2.5. A two workday waiting period from time of notice until time of the MHE. If circumstances of military duty prevent complying with this right, the member's commander or the referring official, as appropriate, must specify the reasons for a more expedient non-emergency referral when notifying the member. "Workday" means the member's normal duty day. This right does not apply in the case of an emergency referral.
1.2.6. Treatment, when involuntarily hospitalized, which is the most appropriate and therapeutic available, in a setting no more restrictive than it must be for effective treatment.
1.3. Involuntary Inpatient or Emergency Admissions for Mental Health Evaluations. Only use inpatient MHEs when such evaluations are not appropriate or reasonable on an outpatient basis, in accordance with the least restrictive alternative principle. Only a psychiatrist, or, in cases in which a psychiatrist is not available, another MHP or a physician, with inpatient admitting privileges, may admit a member of the Armed Forces for a MHE on an inpatient basis. As soon as possible after admission, the member has the rights detailed in paragraphs 1.2 through 1.2.6, except 1.2.5.
1.3.1. The member also has the right to:
1.3.1.1. Be informed of the reasons for the MHE, the nature and consequences of the MHE and any treatment, and the member's rights under this instruction, when and as the member's condition permits.
1.3.1.2. Contact a friend, relative, attorney, or inspector general, as soon after admission as the member's condition permits.
1.3.2. The attending psychiatrist or other physician will:
1.3.2.1. Determine if continued hospitalization and treatment is justified within 2 workdays after the member's admission, or if the member should be released. "Workday" means the attending physician's normal duty day.
1.3.2.2. Notify the member orally and in writing of the reasons for continued hospitalization and treatment, if such determination is made.
1.3.3. If a determination is made that continued hospitalization and treatment are justified, the medical facility commander, if he or she holds the grade of O-5 or higher, or if the medical facility commander is not in the grade of O-5 or higher, the installation commander holding such grade, will:
1.3.3.1. Appoint a neutral and disinterested officer to conduct a review of any involuntary psychiatric admission, to be completed within 72 hours of the admission. The review officer will be a privileged mental health provider or physician not assigned as the member's primary provider, not a member of the multi-disciplinary treatment team assigned to the member's case and not assigned to the member's immediate chain of command. There is no grade level restriction on the mental health professional or physician who is appointed to conduct the review.
1.3.3.2. Direct an inspector general investigation if the review officer reports any impropriety in the MHE referral process.

NOTE: If the medical facility commander or a superior ordered the mental health evaluation, a commander superior to that officer will appoint the review officer, take his or her report, and direct any investigation.
1.3.4. The review officer will:
1.3.4.1. Consider all information that is reasonably available and relevant to the member's hospitalization. At a minimum, the review officer will interview the commander or referring official directing the hospitalization, the member's attending physician, and the member, if the member consents and his or her condition permits.
1.3.4.2. During any interview with the member, introduce him or herself, explain the review and the reasons for the interview, the anticipated length of the process, and advise the member:
1.3.4.2.1. Of his or her rights under Article 31, UCMJ, and the Fifth Amendment to the US Constitution. (Review officers should consult their servicing staff judge advocate for advice.)
1.3.4.2.2. That he or she may have an attorney present during the interview, if requested.
1.3.4.2.3. That if an attorney is requested, and he or she does not already have one, a military attorney will be appointed.
1.3.4.2.4. That he or she has the right to representation during the review by an attorney of the member's choosing at the member's expense, or by a judge advocate.
1.3.4.3. Report the determination of the need for further hospitalization and treatment to the medical facility commander or superior commander within 72 hours of the member's admission. A review officer's determination that the member should be discharged shall be reviewed by appropriate MHPs and the appointing authority, and, absent compelling reason to the contrary, the member should be released. In the event the appointing authority determines that the member will not be released, the

appointing authority will document, in writing, the reasons for doing so. Absent new information, the member may not be involuntarily admitted for inpatient psychiatric evaluation after the review officer has determined he or she should be released. The review officer will ensure that the MHE process is properly executed according to this instruction.

1.3.4.4. Determine if there is reasonable cause to believe the referral for inpatient MHE was used in an inappropriate, retributive, or punitive way, or was otherwise in violation of this instruction. The reviewer shall report any determination than the MHE was used in a manner in violation of this instruction to the DoD Inspector General, in accordance with paragraph 1.5 of this instruction.

1.3.4.5. Report any improprieties in the MHE referral process to the installation commander.

NOTE: If the review officer was not appointed by the medical facility commander, the review officer will report to the appointing commander.

1.4. Prohibited Acts. Violations of this paragraph are punishable under Article 92, UCMJ. Referring officials and other persons will not:

1.4.1. Refer a member for any MHE as a reprisal for making or preparing a lawful communication to a Member of Congress, an inspector general, a member of any DoD audit, inspection, investigation, or law enforcement organization, or any appropriate authority in the member's chain of command.

1.4.2. Restrict a member from lawfully communicating with an inspector general, attorney, Member of Congress, or other authority about the member's MHE referral.

1.5. Reporting Alleged Reprisals. An Inspector General must report to the service specific DoD/IG, within 10 workdays of receipt, all allegations that a member was referred for a MHE in violation of this instruction. These reporting requirements are exempt from licensing according to AFI 37-124, The Information Collections and Reports Management Program .

1.5.1. Notify in writing and include the following:

1.5.1.1. Name of service member, rank, and duty location.

1.5.1.2. Synopsis of the specific allegation and the date received by the IG.

1.5.1.3. Name and duty location of the proposed investigator.

1.5.2. Unless notified that the DoD/IG assumes investigative responsibility for a particular matter, initiate or cause to be initiated an investigation of the issues raised in the allegations.

1.5.3. If the investigation is not completed within 90 days of receipt of the allegation, provide an interim report to the DoD/IG on the 90th day and supplement it every 60 days thereafter until submitting the final report.

1.5.4. Provide to the DoD/IG a copy of the report of investigation (with attachments) within one week after completing the investigation.

1.5.5. Provide to the DoD/IG a written report of any disciplinary and administrative action taken against any individual in connection with the investigation, within one week after taking the action.

2. Mental Health Inquiries Under Rule for Courts-Martial 706. Medical personnel will conduct inquiries into a military member's mental responsibility for alleged offenses or mental capacity to stand trial per Rule for Courts-Martial 706 and Military Rule of Evidence 302.

★3. Limited Privilege Suicide Prevention (LPSP) Program.

3.1. Program Objective. The objective of the LPSP program is to identify and treat those members who, because of the stress of impending disciplinary action under the Uniform Code of Military Justice (UCMJ), pose a genuine risk of suicide. In order to encourage and facilitate treatment, the LPSP program provides limited confidentiality under the enumerated circumstances.

3.2. Application. The LPSP program applies to any member who has been notified of his or her commander's intent to impose punishment pursuant to Article 15, UCMJ, or has had court-martial charges preferred against them pursuant to Article 30, UCMJ (R.C.M. 307).

3.3. Initiation. If, subsequent to one of the events listed in paragraph 3.2., defense counsel, trial counsel, law enforcement official, staff judge advocate, first sergeant, squadron executive officer or any other individual officially involved in the processing of the disciplinary action has a good faith belief that the member may present a risk of suicide, the individual shall communicate that concern to the member's immediate commander with a recommendation that the member be referred for a mental health evaluation and possible placement in the LPSP program.

3.3.1. Based on the provided information or relevant information from other sources, and after consultation with the MHP, the commander may refer the member for a MHE.

3.3.1.1. The provisions of paragraphs 1. to 1.5.5. apply to any referral under this paragraph.

3.3.2. The MHP will evaluate the member to determine if the member poses a risk of suicide, and if so, initiate treatment.

3.4. Duration. The limited protections provided by the LPSP program shall apply only so long as the MHP determines that there is a continuing risk of suicide. The MHP shall notify the member's immediate commander when, in his or her

professional opinion, the member no longer poses a risk of suicide and shall appropriately annotate the member's medical records. The limited protections afforded by the LPSP program cease at that time.

3.5. Limited Protection. Members enrolled in the LPSP program are granted limited protection with regard to information revealed in, or generated by their clinical relationship with MHPs. Such information may not be used in the existing or any future UCMJ action or when weighing characterization of service in a separation. Commanders or persons acting under their authority, such as staff judge advocates, squadron executive officers, or first sergeants, may use the information for any other purposes authorized by law, this instruction, and other Air Force instructions and programs.

3.5.1. The limited protection provided by the LPSP program does not apply to:

- The introduction of evidence for impeachment or rebuttal purposes in any proceeding in which evidence generated by, and during the LPSP relationship has first been introduced by the member.
- Disciplinary or other action based on independently derived evidence (other than from the LPSP relationship).
- Any information or evidence acquired or created by MHPs or other medical providers before placement in the LPSP program or subsequent to release from the program, except for those medical summaries or other similar documents created after releasee from the program but which pertain to treatment while in the LPSP program.

3.6. Disclosing Case File Information.

3.6.1. MHP staff engaged in LPSP programs may disclose case-file information of military members, including providing copies of documentation to:

3.6.1.1. Other medical personnel directly engaged in evaluating and treating program participants. This would include MHP staff at other facilities to which the member may be referred.

3.6.1.2. VA treatment personnel when members are transferred directly to a VA facility.

3.6.1.3. The confinement facility commander when members are transferred to a confinement facility as a result of an ongoing court-martial.

3.6.1.4. Other authorized personnel with a need to know in the official performance of their duties. MHPs should consult with the staff judge advocate before any release made under this provision.

3.6.2. Before an MHP or other medical provider releases any information to sources other than those designated in this instruction, the member must grant permission by signing and dating a statement (AF Form 2746) specifying what information may be released and to whom it may be released.

3.6.3. Do not review, handle, or disclose any LPSP case file information to any person or agency unless the Privacy Act of 1974 (AFI 37-132) authorizes the disclosure. Disclosures within DoD are only authorized on a need-to-know basis when personnel need the information to perform official duties.

CHARLES H. ROADMAN II, Lt General, USAF, MC
Surgeon General

GLOSSARY OF REFERENCES, ABBREVIATIONS, ACRONYMS, AND TERMS

References

Public Laws 101-510 and 102-484
Manual for Courts-Martial, United States, 1995
DoDD 6490.1, Mental Health Evaluations of Members of the Armed Forces, September 14, 1993
AFPD 44-1, Medical Operations
AFI 90-301, Inspector General Complaints Program
AFI 37-124,The Information Collections and Reports Management Program

Abbreviations and Acronyms

AFPD−Air Force Policy Directive
AFI−Air Force Instruction
DoD−Department of Defense
IG−Inspector General
MCM−Manual for Courts-Martial
MHE−Mental Health Evaluation
MHP−Mental Health Provider
MRE−Military Rules of Evidence
OSI−Office of Special Investigation
RCM−Rules for Courts-Martial
UCMJ−Uniformed Code of Military Justice

Terms

★**Emergencies**—When information or circumstances indicate the member is a danger to self or others or government property.
★**Involuntary Admission**—The admission of a member, directed by a privileged mental health provider, when a member of the Armed Forces is believed to be suffering from a mental disorder that makes the individual a danger to self, others, or to government property, and refuses to be voluntarily hospitalized.
Member—Any active duty person (including guard and reserve components) serving in Armed Forces of the United States.
Mental Disorder—A clinically significant behavior or psychological syndrome or pattern that occurs in a person that is associated with present distress (a painful symptom) or disability (impairment in one or more important areas of functioning) or with a significantly increased risk of suffering death, pain, disability or a important loss of freedom. In addition, this syndrome or pattern must not be merely an expected response to a particular event; e.g., the death of a loved one. It must be a considered manifestation of a behavior, psychological, or biological dysfunction in the person. Neither deviant behavior (political, religious, sexual), nor conflicts between the member and society are mental disorders unless the deviance or conflict is a symptom of dysfunction in the member.
Mental Health Evaluation—A psychiatric or psychological examination or evaluation or any other means of assessing a member's state of mental health for the purpose of determining fitness for duty in the Armed Forces.
★**Mental Health Provider**—A psychiatrist, clinical psychologist, or a doctoral-level clinical social worker privileged to conduct mental health evaluations. For the purposes of administering the limited privilege suicide prevention program (paragraph 3), the term mental health provider (MHP) also includes master's level prepared clinical social workers.
Referring Official—Any person (including a commander) other than a mental health provider or physician, where a mental health provider is not available, who refers a member for a mental health evaluation.
Privileges—Permission to provide medical or other patient care services in the granting institution within defined limits based on the individual's education, professional license, experience, competence, ability, health, and judgment.